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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,604	01/28/2004	Haixiang Liang	14541US02	5206

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EXAMINER

CHEN, QING

ART UNIT	PAPER NUMBER
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2194

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/767,604	Applicant(s) LIANG ET AL.	
	Examiner Qing Chen	Art Unit 2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) * | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the initial Office action based on the application filed on January 28, 2004.

Claims 1-38 are currently pending and have been considered below.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

- It does not state that the person making the oath or declaration believes the named inventor or inventors to be the first inventor or inventors of the subject matter which is claimed and for which a patent is sought.
- It contains a typographical error: there should be a white space between the words "COMMUNICATION" and "DEVICE" in the title of the invention.
- It does not contain a checkmark that indicates the specification of the application is attached to the oath or declaration.
- It does not identify the mailing address of each inventor. A mailing address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing address should include the ZIP Code designation. If the mailing address of the inventor is the same as the residence address of the inventor, the phrase "Same as the residence" may be used to identify the mailing address. The mailing address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:

- Elements 120, 121, and 122 in Figure 1.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application.

The drawings are objected to because “indications” in Figure 1 is not mentioned in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application.

Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the Examiner, the Applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities:
- The specification contains the following typographical errors:
 - The element “playback software instructions” should be changed to “playback software” in page 10, paragraph [28], since the reference number 204 is already associated with a playback software.
 - The element “ADSL modem” should be changed to “communication device” in page 10, paragraph [25], page 12, paragraph [35], and page 13, paragraphs [36] and [37], since the reference number 101 is already associated with a communication device.
 - The element “hard disk” should be changed to “memory device” in page 12, paragraph [35], and page 13, paragraphs [36] and [37], since the reference number 102 is already associated with a memory device.
 - The element “PC” should be changed to “computer” in page 13, paragraphs [36] and [37], since the reference number 202 is already associated with a computer.

Appropriate correction is required.

5. The use of trademarks, such as WINDOWS and LINUX, has been noted in this application. Trademarks should be capitalized wherever they appear (capitalize each letter OR accompany each trademark with an appropriate designation symbol, e.g., TM or ®) and be accompanied by the generic terminology (use trademarks as adjectives modifying a descriptive noun, e.g., “the WINDOWS operating system”).

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

Claim Objections

6. **Claims 12, 14, 19, and 31** are objected to because of the following informalities:
- **Claim 12** contains a typographical error: the first occurrence of the word “of” should be changed to “or” in the phrase “arriving at one *of* both of the first input and the second input.”
 - **Claim 14** contains a typographical error: the word “more” should be changed to “both” in the phrase “received at one or *more* of the first input and the second input.”
 - **Claim 19** recites the limitation “the memory module” in the last limitation. The Examiner subsequently interprets this limitation as reading “the memory” for the purpose of providing it with proper explicit antecedent basis.
 - **Claim 31** contains a typographical error: the word “further” should be deleted.
- Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. **Claim 29** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 contains the trademark or trade name WINDOWS. When a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of the 35 U.S.C. 112, second paragraph. *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, the use of a trademark or trade name in a claim to identify or describe a material or product (in the present case, a specific operating system) would not only render a claim indefinite, but would also constitute an improper use of the trademark or trade name.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. **Claims 35 and 37** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The result of **Claims 35 and 37** is directed to the act of “observing,” which does not appear to be a tangible result so as to constitute a practical application of the idea. The act of “observing” is merely a thought or an abstract idea and does not appear to produce a tangible result even if the step of observation does occur, since the result of that observation is not conveyed in the real world. The result is an observation, which is neither used in a disclosed practical application nor made available for use in a disclosed practical application. It also does not appear that the usefulness of the observation can be realized from the claimed steps to support a disclosed specific, substantial, and credible utility so as to produce a useful result.

Therefore, the claims do not meet the statutory requirement of 35 U.S.C. § 101, since the claims are not directed to a practical application of the § 101 judicial exception producing a result tied to the physical world.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. **Claims 1-38** are rejected under 35 U.S.C. 102(e) as being anticipated by **Kaler et al.** (US 6,467,052).

As per **Claim 1**, **Kaler et al.** disclose a system for analyzing real-time operation of a communication device, the system comprising:

A. A communication device comprising a recording module, wherein the recording module causes the recording of input information that is input to the communication device during real-time operation of the communication device (*see Figure 3, Element 199; Column 11, Lines 66-67; and Column 12, Lines 1-9*); and

B. A playback device comprising a model of the communication device that the playback device executes according to the recorded input information (*see Figure 13; and Column 32, Lines 28-34*).

As per **Claim 2**, **Kaler et al.** disclose a system for analyzing real-time operation of a communication device as in **Claim 1** above, and further disclose that the system comprising a

debugging module that provides for controlling and observing the operation of the playback device (*see Column 22, Lines 50-67; and Column 23, Lines 1-11*).

As per **Claim 3**, Kaler et al. disclose a system for analyzing real-time operation of a communication device **as in Claim 1 above**, and further disclose that the playback device is communicatively coupled to the communication device and the recording module causes the input information to be sent to the playback device during real-time operation of the communication device (*see Figure 2; and Column 11, Lines 20-31*).

As per **Claim 4**, Kaler et al. disclose a system for analyzing real-time operation of a communication device **as in Claim 1 above**, and further disclose that the system comprising a computer communicatively coupled to the communication device, wherein the recording module causes the recording of the input information to a memory device of the computer (*see Column 8, Lines 26-29; Column 11, Lines 4-10; Column 12, Lines 29-32; and Column 13, Lines 21-26*).

As per **Claim 5**, Kaler et al. disclose a system for analyzing real-time operation of a communication device **as in Claim 1 above**, and further disclose that the input information comprises input data and input commands from a computer, and input information from a device other than the computer (*see Column 12, Lines 29-32; Column 13, Lines 59-67; Column 14, Lines 1-6; and Column 25, Lines 33-39*).

As per **Claim 6**, Kaler et al. disclose a system for analyzing real-time operation of a communication device **as in Claim 1 above**, and further disclose that the model of the communication device is a bit-exact software model (*see Column 32, Lines 57-62; and Column 35, Lines 36-47*).

As per **Claim 7**, Kaler et al. disclose a system for analyzing real-time operation of a communication device **as in Claim 1 above**, and further disclose that the model of the communication device comprises a device substantially similar to at least a portion of the communication device (*see Figure 13; and Column 32, Lines 28-31*).

As per **Claim 8**, Kaler et al. disclose a system for analyzing real-time operation of a communication device **as in Claim 1 above**, and further disclose that the system comprising a networked computer coupled to the communication device over a computer network, and wherein the recording module causes the communication device to send the input information to the networked computer (*see Column 8, Lines 37-47; and Column 11, Lines 20-27*).

As per **Claim 9**, Kaler et al. disclose a communication device comprising:

A. A first input that receives information from a first device (*see Figure 2, Element 102; and Column 11, Lines 20-27*);

B. A second input that receives information from a second device that the first device is communicating with using the communication device (*see Figure 2, Element 104; and Column 11, Lines 20-27*); and

C. A recording module communicatively coupled to the first input and the second input that causes input information arriving at one or both of the first input and the second input during real-time operation of the communication device to be recorded (*see Figure 2, Element 100; and Column 11, Lines 20-27*).

As per **Claim 10**, Kaler et al. disclose a communication device **as in Claim 9 above**, and further disclose that the device comprising a command input that receives command information from the first device, and wherein the recording module further causes command information arriving at the command input during real-time operation of the communication device to be recorded (*see Column 11, Lines 20-27 and 66-67; and Column 12, Lines 1-9*).

As per **Claim 11**, Kaler et al. disclose a communication device **as in Claim 9 above**, and further disclose that the first device is a computer system, and wherein the recording module causes the input information arriving at one or both of the first input and the second input during real-time operation of the communication device to be recorded on a memory device of the computer system (*see Column 8, Lines 26-29; Column 12, Lines 29-32; and Column 13, Lines 21-26*).

As per **Claim 12**, Kaler et al. disclose a communication device **as in Claim 9 above**, and further disclose that the recording module causes the input information arriving at one or both of the first input and the second input to be communicated to a networked computer

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communicatively coupled to the communication device over a communication network (*see Column 8, Lines 37-47; and Column 11, Lines 4-10 and 20-31*).

As per **Claim 13**, Kaler et al. disclose a communication device as in **Claim 9 above**, and further disclose that the communication device comprises a computer communication device (*see Column 8, Lines 26-29*).

As per **Claim 14**, Kaler et al. disclose a real-time operating environment for a communication device, comprising:

- A. A memory device (*see Column 8, Lines 26-29*); and
- B. A communication device communicatively coupled to the memory device, the communication device comprising:
 - I. A first input that receives information from a first device (*see Figure 2, Element 102; and Column 11, Lines 20-27*);
 - II. A second input that receives information from a second device that the first device is communicating with using the communication device (*see Figure 2, Element 104; and Column 11, Lines 20-27*); and
 - III. A recording module communicatively coupled to the first input, the second input and the memory device that causes information received at one or both of the first input and the second input to be stored in the memory device (*see Column 8, Lines 26-29; Column 12, Lines 29-32; and Column 13, Lines 21-26*).

As per **Claim 15**, Kaler et al. disclose a real-time operating environment for a communication device **as in Claim 14 above**, and further disclose that the communication device further comprises a command input that receives command information from the first device, and wherein the recording module further causes command information received at the command input to be stored in the memory device (*see Column 11, Lines 20-27 and 66-67; and Column 12, Lines 1-9*).

As per **Claim 16**, Kaler et al. disclose a real-time operating environment for a communication device **as in Claim 14 above**, and further disclose that the first device comprises the memory device (*see Column 8, Lines 26-29*).

As per **Claim 17**, Kaler et al. disclose a real-time operating environment for a communication device **as in Claim 14 above**, and further disclose that the real-time operating environment comprising a networked computer communicatively coupled to the communication device, and wherein the networked computer comprises the memory device (*see Column 8, Lines 37-47*).

As per **Claim 18**, Kaler et al. disclose a real-time operating environment for a communication device **as in Claim 14 above**, and further disclose that the communication device is a computer communication device (*see Column 8, Lines 26-29*).

As per **Claim 19**, Kaler et al. disclose a non-real-time playback environment for analyzing real-time performance of a communication device, the environment comprising:

A. A memory having input information that was obtained from a communication device during real-time operation of the communication device (*see Column 8, Lines 26-29 and 62-67; Column 9, Lines 1-5; and Column 11, Lines 20-31*); and

B. A playback module communicatively coupled to the memory, the playback module comprising a model of the communication device that the playback module executes according to the input information in the memory (*see Figure 13; and Column 32, Lines 28-34*).

As per **Claim 20**, Kaler et al. disclose a non-real-time playback environment for analyzing real-time performance of a communication device **as in Claim 19 above**, and further disclose that the input information comprises: information from a computer coupled to the communication device; and information from a device that the computer is communicating with using the communication device (*see Column 11, Lines 20-31; and Column 12, Lines 4-9*).

As per **Claim 21**, Kaler et al. disclose a non-real-time playback environment for analyzing real-time performance of a communication device **as in Claim 19 above**, and further disclose that the input information comprises data and command information sent from a computer to the communication device (*see Column 12, Lines 29-32; Column 13, Lines 59-67; Column 14, Lines 1-6; and Column 25, Lines 33-39*).

As per **Claim 22**, Kaler et al. disclose a non-real-time playback environment for analyzing real-time performance of a communication device **as in Claim 19 above**, and further disclose that the non-real-time playback environment comprising a debugging module communicatively coupled to the playback module that provides for controlling and observing the operation of the playback module (*see Column 22, Lines 50-67; and Column 23, Lines 1-11*).

As per **Claim 23**, Kaler et al. disclose a non-real-time playback environment for analyzing real-time performance of a communication device **as in Claim 19 above**, and further disclose that the model of the communication device is a bit-exact software model of the communication device (*see Column 32, Lines 57-62; and Column 35, Lines 36-47*).

As per **Claim 24**, Kaler et al. disclose a non-real-time playback environment for analyzing real-time performance of a communication device **as in Claim 19 above**, and further disclose that the non-real-time playback environment comprising a computer communicatively coupled to the communication device, and wherein the memory is a memory device of the computer (*see Column 8, Lines 37-47*).

As per **Claim 25**, Kaler et al. disclose a non-real-time playback environment for analyzing real-time performance of a communication device **as in Claim 24 above**, and further disclose that the computer comprises the playback module (*see Figure 13; and Column 32, Lines 28-34*).

As per **Claim 26**, Kaler et al. disclose a non-real-time playback environment for analyzing real-time performance of a communication device **as in Claim 19 above**, and further disclose that the non-real-time playback environment comprising a networked computer communicatively coupled to the communication device over a computer network, and wherein the networked computer comprises the memory (*see Column 8, Lines 37-47*).

As per **Claim 27**, Kaler et al. disclose a method for analyzing real-time operation of a communication device, the method comprising:

- A. Operating the communication device in real-time, the communication device comprising a recording module (*see Figure 3, Element 199; Column 4, Lines 42-44; Column 11, Lines 20-31; and Column 35, Lines 40-41*);
- B. Utilizing the recording module to cause the recording of input information input to the communication device during real-time operation of the communication device (*see Column 11, Lines 66-67; and Column 12, Lines 1-9*); and
- C. Executing a model of the communication device, wherein the model is responsive to the recorded input information (*see Column 32, Lines 28-34*).

As per **Claim 28**, Kaler et al. disclose a method for analyzing real-time operation of a communication device **as in Claim 27 above**, and further disclose that utilizing the recording module comprises utilizing the recording module to cause the recording of the input information to a memory device of a computer that is connected to the communication device (*see Column 8, Lines 26-29; Column 12, Lines 29-32; and Column 13, Lines 21-26*).

As per **Claim 29**, Kaler et al. disclose a method for analyzing real-time operation of a communication device **as in Claim 27 above**, and further disclose that:

A. Operating the communication device comprises running the communication device as a Windows® device driver on a computer that is utilizing the communication device (*see Column 10, Lines 54-56*); and

B. Utilizing the recording module comprises utilizing the recording module to cause the recording of the input information to a memory device of the computer (*see Column 8, Lines 26-29; Column 12, Lines 29-32; and Column 13, Lines 21-26*).

As per **Claim 30**, Kaler et al. disclose a method for analyzing real-time operation of a communication device **as in Claim 27 above**, and further disclose that utilizing the recording module comprises utilizing the recording module to cause the recording of the input information a memory device of a computer that is communicatively coupled to the communication device through a communication network (*see Column 8, Lines 26-29; Column 12, Lines 29-32; and Column 13, Lines 21-26*).

As per **Claim 31**, Kaler et al. disclose a method for analyzing real-time operation of a communication device **as in Claim 30 above**, and further disclose that utilizing the recording module comprises executing a recording application program on the computer (*see Column 32, Lines 28-45*).

As per **Claim 32**, Kaler et al. disclose a method for analyzing real-time operation of a communication device **as in Claim 27 above**, and further disclose that utilizing the recording module comprises utilizing the recording module to cause the recording of input data and input commands from a computer and input samples from a communication medium (*see Figure 2, Element 100; and Column 11, Lines 20-27*).

As per **Claim 33**, Kaler et al. disclose a method for analyzing real-time operation of a communication device **as in Claim 27 above**, and further disclose that the method comprising reading the recorded input information into a software model of the communication device (*see Column 32, Lines 35-40*).

As per **Claim 34**, Kaler et al. disclose a method for analyzing real-time operation of a communication device **as in Claim 27 above**, and further disclose that the model is a bit-exact software model of the communication device (*see Column 32, Lines 57-62; and Column 35, Lines 36-47*).

As per **Claim 35**, Kaler et al. disclose a method for analyzing real-time operation of a communication device **as in Claim 27 above**, and further disclose that the method comprising observing execution of the model on the recorded input information (*see Column 32, Lines 28-34*).

As per **Claim 36**, Kaler et al. disclose a method for analyzing real-time operation of a communication device **as in Claim 35 above**, and further disclose that observing execution of the model comprises executing a debugging tool communicatively coupled to the model (*see Column 22, Lines 50-67; and Column 23, Lines 1-11*).

As per **Claim 37**, Kaler et al. disclose a method for analyzing real-time operation of a communication device **as in Claim 27 above**, and further disclose that the method comprising observing execution of the model with the recorded input information in non-real-time (*see Column 35, Lines 36-38*).

As per **Claim 38**, Kaler et al. disclose a method for analyzing real-time operation of a communication device **as in Claim 27 above**, and further disclose that the communication device comprises a computer communication device (*see Column 8, Lines 26-29*).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A. **Knight et al.** (US 5,745,693) disclose a system for collecting event data from the operator interface (OI) of an IDNX network node processor is described, which will permit an historical evaluation of the events occurring on the IDNX network relating to network performance.

B. **Rees et al.** (US 5,748,878) disclose a method and apparatus for analyzing a wide variety of criteria of software executed on embedded systems.

C. **Faust et al.** (US 5,752,159) disclose systems and methods for automatically collecting and delivering semantic event data to an application in an interactive television network.

D. **Ames et al.** (US 6,151,567) disclose a communication system simulation and analysis tool for the ARINC 629 communication protocol.

E. **Kurisu** (US 6,189,084) discloses a debugging method and a monitoring method for an analysis instrument having detectors such as an infrared gas concentration detector.

F. **Liu et al.** (US 6,243,838) disclose a system and method for automatically reporting failure conditions in a server system.

G. **Thelen** (US 6,557,167) discloses an apparatus and methods for measuring and analyzing performance of a computer program.

H. **Kodosky et al.** (US 6,715,139) disclose a computer-based virtual instrumentation system including a host computer and an embedded system or device, wherein graphical programs created using the computer system can be downloaded to the embedded system for execution in a real-time or more deterministic manner.

I. **Hayes et al.** (US 6,772,411) disclose a system for monitoring and improving the performance of software such as a database system.

J. **Davia et al.** (US 6,865,731) disclose testing an application program that is executing on a primary test computer and also on one or more secondary test computers that may be remote

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from the primary test computer, where the secondary test computers may differ from the primary test computer in their processors, operating systems, and configurations.

K. **Jenkin** (US 6,985,940) discloses performance testing of servers for the purpose of determining whether design and/or operational criteria are met, which leads to a determination of the adequacy of sizing of a server.

L. **Gotwals et al.** (US 7,043,719) disclose automatically prioritizing and analyzing performance data for one or more system configurations.

M. **Miyao et al.** (US 2003/0093720) disclose a system that supports program diagnosis and analysis.

N. **Kaliappan et al.** (US 2004/0205406) disclose an automatic test system for testing remote target applications on a communication network.

O. **Greifeneder et al.** (US 2004/0243349) disclose computing systems and more specifically to the testing, auditing and monitoring of networked computing systems.

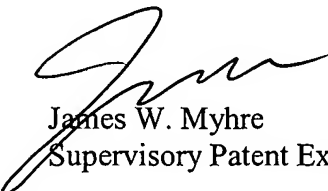
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Qing Chen whose telephone number is 571-270-1071. The Examiner can normally be reached on Monday through Thursday from 7:30 AM to 4:00 PM. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James W. Myhre, can be reached on 571-270-1065. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

QC / QC
August 23, 2006



James W. Myhre
Supervisory Patent Examiner